Duquesne Law Review

Volume 19 | Number 4 Article 9

1981

Constitutional Law - Fourteenth Amendment - Due Process Clause - Civil Rights - Section 1983 - Corporal Punishment

Richard A. Stevens

CONSTITUTIONAL LAW—FOURTEENTH AMENDMENT—DUE PROCESS CLAUSE—CIVIL RIGHTS—SECTION 1983—CORPORAL PUNISHMENT—The United States Court of Appeals for the Fourth Circuit has held that a public school student severely injured by the use of disciplinary corporal punishment can press substantive due process claims under 42 U.S.C. § 1983 for deprivation of the fourteenth amendment right to bodily security.

Hall v. Tawney, 621 F.2d 607 (4th Cir. 1980).

Naomi Faye Hall was a thirteen-year-old student at the Left Hand Grade School in Roane County, West Virginia.[1] On December 6, 1974, one of her teachers administered a spanking[2] resulting in Naomi's hospitalization for ten days for treatment of traumatic injuries to her thigh and possible permanent injuries to her spine.[3] Prior to this incident, Naomi's parents had advised school officials, including the teacher who had performed the paddling, that they did not want their child corporally punished.[4]

Naomi's parents[5] brought an action in federal district court under 42 U.S.C. § 1983[6] against various officials and employees of the school

---

1. Hall v. Tawney, 621 F.2d 607, 609 (4th Cir. 1980).

2. Naomi and her parents alleged that the teacher struck Naomi with a homemade paddle made of hard, thick rubber about five inches in width, shoved her against a large, stationary desk, and vehemently twisted her arm before continuing to strike her with the rubber paddle. The complaint alleged that Naomi was struck "without apparent provocation." *Id.* at 614.

The teacher asserted that Naomi refused, despite repeated warnings, to follow established standards for entering and exiting the school in order to conserve heat on cold days. According to the instructor, when he attempted to administer punishment to Naomi for repeatedly going in and out of the doors on one of the coldest days of the year, she called him a "goddamn sonavabitch" and a "liar" and then kicked and struck him. *Id. See* Brief for Appellees at 2, 3.

3. 621 F.2d at 614.

4. *Id.* at 610.

5. Faye Elizabeth Hall sued in the capacity of next friend and mother of her minor child, Naomi; and with Bervin E. Hall, Naomi's father, in their own right, and on behalf of themselves and all others similarly situated. *Id.* at 607.

6. 42 U.S.C. § 1983 (1976) provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The Supreme Court has held that section 1983 applies to those actions done under color of state authority which deprive persons of rights guaranteed by the fourteenth amendment to the United States Constitution because section 1983 was passed pursuant to the fourteenth amendment and is construed in light of the purposes of that amendment. Monroe v. Pape, 365 U.S. 167, 171 (1961).

system[7] alleging violations of Naomi's constitutional rights to procedural and substantive due process,[8] to be free of cruel and unusual punishment,[9] and to equal protection of the laws.[10] Naomi's parents also alleged violations of their substantive due process right to choose their child's discipline.[11] The United States District Court for the Southern District of West Virginia dismissed the action. As authority for its dismissal, the district court relied primarily upon the Supreme Court's decision in *Ingraham v. Wright*.[12] The *Ingraham* Court found that the cruel and unusual punishment clause of the eighth amendment does not apply to disciplinary corporal punishment in public schools, and further concluded that the due process clause of the fourteenth amendment does not require notice and hearing prior to the use of corporal punishment.[13] Naomi and her parents appealed the district court's dismissal contending that their substantive due process claims were valid.[14]

Relying on the Supreme Court's decision in *Baker v. Owen*,[15] the

7. The complaint named as defendants G. Garrison Tawney, Naomi's instructor; Bernard Claywell, the principal of the school who was present for part of the paddling; John Kingery, former superintendent of the county school system; Lonnie Canterbury, superintendent at the time of the incident; and five county Board of Education members. 621 F.2d at 609. A fifth count alleged a state assault and battery tort claim against Tawney alone. *Id.* at 609 n.1.

8. The fourteenth amendment to the United States Constitution provides in pertinent part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person . . . equal protection of the laws." U.S. CONST. amend. XIV, § 1.

9. The eighth amendment to the United States Constitution states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

10. *See* note 8 *supra*.

11. Hall v. Tawney, No. 75-0190 CH (S.D. W. Va., May 16, 1978).

12. 621 F.2d at 609. *See* 430 U.S. 651 (1977).

13. 430 U.S. at 682.

14. 621 F.2d at 609. Naomi and her parents conceded that the decision in *Ingraham* foreclosed their procedural due process and cruel and unusual punishment claims. Consequently, they asserted only their substantive due process claims on appeal. 621 F.2d at 609-10.

15. 395 F. Supp. 294 (M.D.N.C. 1975), *aff'd*, 423 U.S. 907 (1975)(summary affirmance). In *Baker* the plaintiff parents had informed school officials that they did not want their child spanked. Nevertheless, their child was given two licks with a desk drawer divider slightly thicker than a ruler. Noting that the Court had acknowledged the constitutional stature of parental rights in Meyer v. Nebraska, 262 U.S. 390 (1923), and in Pierce v. Society of Sisters, 268 U.S. 510 (1925), the district court in *Baker* determined that the fourteenth amendment concept of liberty embraced the right of parents to determine the mode of discipline for their children. According to the court, however, such a right is not fundamental. Because corporal punishment furthers a rational and legitimate state interest of maintaining discipline, the state's interest prevailed over parents' rights. 395 F. Supp. at 298-300.

Naomi and her parents argued that the Supreme Court's summary affirmance of the

United States Court of Appeals for the Fourth Circuit[16] rejected the parents' substantive due process claim, finding that, although parents' rights to determine the manner of disciplining their children are constitutionally protected, those rights are overborne by the countervailing interests of the state in maintaining discipline in public schools.[17] Before proceeding to a consideration of Naomi's substantive due process claim, the court noted that the United States Supreme Court has refused to decide whether substantive due process claims such as the one asserted by Naomi are valid.[18] Believing this refusal to be an indication that substantive due process rights might be implicated in school disciplinary punishments,[19] the *Hall* court concluded that the infliction of corporal punishment by state officials may under some circumstances give rise to a section 1983 claim to vindicate substantive due process rights.[20] The court relied on the principle that federal constitutional rights may exist in parallel with state rights and that relief under section 1983 does not depend upon the unavailability of state remedies, but is supplementary to them.[21] Recognizing that the district court's dismissal of the action disposed of the controversy on the pleadings alone, the court of appeals remanded the case for further proceedings on Naomi's claim of substantive due process violations.[22]

The court then went on to shape the substantive due process right

---

district court's decision in *Baker* did not constitute binding precedent because a summary affirmance only affirms the judgment that was reached. Brief for Appellants at 36. *See also* Mandel v. Bradley, 432 U.S. 173 (1977), and Fusari v. Steinberg, 419 U.S. 379, 391-92 (1975) (Burger, C.J., concurring). The *Hall* court rejected this argument, noting that the Supreme Court has subsequently cited its summary affirmance of *Baker*, stating that "parental approval of corporal punishment is not constitutionally required." 621 F.2d at 610 (citing Ingraham v. Wright, 430 U.S. at 662 n.22). Moreover, the *Hall* court indicated that it was willing to accept the reasoning of *Baker* even without the express imprimatur of the Supreme Court. 621 F.2d at 610 (citing Wisconsin v. Yoder, 406 U.S. 205, 215-16 (1972), where the Court declared that every person cannot make his own standards on matters of conduct in which society as a whole has an important interest).

16. Judge Phillips wrote the decision of the unanimous panel which also included Judges Winter and Butzner.

17. 621 F.2d at 610.

18. *Id. See* Ingraham v. Wright, 430 U.S. at 659 n.12, 679 n.47.

19. 621 F.2d at 612. In his dissent in *Ingraham*, Justice White argued that the majority holding could not be construed to mean that a substantive due process claim might have existed, as this would mean that the plaintiffs were precluded from relief simply because of an error in drafting their complaint. 430 U.S. at 689 n.5 (White, J., dissenting). The *Hall* court recognized the logic of Justice White's argument, but believed that the Court's express reservation of the issue indicates the possible existence of a substantive due process right. 621 F.2d at 611 n.4.

20. 621 F.2d at 611.

21. *Id.* at 612 (citing Monroe v. Pape, 365 U.S. 167, 183 (1961)).

22. 621 F.2d at 611.

it had recognized.[23] The court began by noting that because corporal punishment reasonably relates to a legitimate state interest of maintaining order in the public schools, it does not per se violate substantive due process rights.[24] The court concluded, however, that such punishment is not privileged regardless of its severity or consequence.[25] According to the court, the use of corporal punishment is limited by the individual's constitutional right to bodily security, which guards against state intrusions into personal privacy in manners which are shocking to the conscience.[26]

The court next discussed the differences between a substantive due process right and a state assault and battery claim. A right under state tort law may well turn upon whether the number of licks administered during disciplinary action was excessive. In contrast, substantive due process is violated only if the use of force is inspired by malice and so disproportionate to the need that it causes severe injuries so shocking to the conscience that it constitutes an inhumane abuse of official power.[27] Examining the facts alleged in Naomi's complaint,[28] the court determined that they were sufficient to state a claim for which relief could be granted under section 1983.[29] Hence, it was error

---

23. *Id.* The court recognized the dangers of expounding constitutional doctrine on the basis of bare-bones pleadings. *Id.* at 611 n.6.

24. *Id.* at 611.

25. *Id.* at 612. In so concluding, the *Hall* court agreed with the dissenters from the court of appeals opinion in Ingraham v. Wright, 525 F.2d 909 (5th Cir. 1976) (en banc), *aff'd*, 430 U.S. 651 (1977). There, the dissenters contested the majority's conclusion that the legitimacy of corporal punishment in public schools did not depend on its severity or frequency. 525 F.2d at 920-21 (Godbold, J., dissenting); *id.* at 925-26 (Rives, J., dissenting). The Supreme Court's affirmance of the *Ingraham* decision was not considered by the *Hall* court to have eroded the persuasiveness of those dissenting opinions. 621 F.2d at 612.

26. 621 F.2d at 613. The court cited Rochin v. California, 342 U.S. 165 (1952) (evidence excluded because forcible use of a stomach pump by police shocks the conscience and violates the due process clause); Johnson v. Glick, 481 F.2d 1028 (2d Cir.) (unprovoked beating of pretrial detainee by guard violates the due process clause and is actionable under section 1983), *cert. denied*, 414 U.S. 1033 (1973); and Jenkins v. Averett, 424 F.2d 1228 (4th Cir. 1970) (reckless pistol shooting of suspect by police violates individual's right to physical integrity under the fourth amendment and is actionable under section 1983).

27. *Id. See* Rochin v. California, 342 U.S. at 172; Johnson v. Glick, 481 F.2d at 1033.

Because recovery under a substantive due process claim requires such brutal action, a careless or unwise excess of zeal would not constitute a violation of the constitutional right of bodily security, whereas unwarranted zealousness might form the basis of state tort law. Because the standards for section 1983 are so high, courts are not forced to sit in judgment over the appropriateness of specific punishments for specific forms of misconduct. 621 F.2d at 613.

28. *See* note 2 *supra.*

29. 621 F.2d at 614-15. The court remanded Naomi's substantive due process and state tort claims, realizing that upon further development the facts of the incident may not support a claim of violation of substantive due process. *Id.* at 614.

for the district court to have dismissed Naomi's complaint against the teacher and principal who took part in the paddling.[30] The court affirmed the dismissal of Naomi's complaint against other members of the school system who were named as defendants but who were not directly involved in the incident.[31]

In recognizing a substantive due process right under section 1983 to redress injuries inflicted by public school teachers administering excessive corporal punishment, the court of appeals in *Hall* has addressed an issue on which the United States Supreme Court has been silent. The Supreme Court in *Ingraham v. Wright* decided only the procedural due process issue implicated by public school disciplinary corporal punishment, expressly reserving decision on the availability of a substantive due process claim.[32]

In *Ingraham* the Court held that freedom from punishment and bodily restraint is within the liberty interest of personal security which has historically been afforded the protection of procedural due process.[33] Although the *Ingraham* Court recognized that a school child has strong interests in procedural safeguards, it denied the student's claim, believing that traditional common law remedies offer sufficient due process protection, and that the imposition of procedural safeguards would intrude into the educational responsibility of public school authorities.[34]

The Court in *Ingraham* also held that the cruel and unusual punishment clause of the eighth amendment[35] does not apply to disciplinary

---

30. 621 F.2d at 615.

31. *Id.* The court affirmed the district court's dismissal of the parents' claim, *see* note 15 and text accompanying notes 15 and 16 *supra*, reversing and remanding only Naomi's substantive due process and state tort claims. 621 F.2d at 615. The reversal was further qualified to include only the teacher who administered the punishment and the principal who was present during the incident. *Id.* at 614-15. The court decided that the complaint did not state sufficient substantive due process claims against any of the other defendants because it did not specifically allege that they participated in, directed, supervised, authorized, or condoned the specific incident upon which the claim was based. *Id.* at 615. Section 1983 does not utilize agency principles. To hold any principals liable for the conduct of their agents, the principal must have been personally involved or have enacted or supported a deliberate policy to violate the rights of plaintiff's class. Rizzo v. Goode, 423 U.S. 362 (1976) (mayor and high police officials not responsible for action of a minority of police officers on staff because evidence did not establish deliberate policy enacted or supported by defendants to violate the rights of plaintiff's class); Vinnedge v. Gibbs, 550 F.2d 926 (4th Cir. 1977) (superintendent of jails not personally involved in the deprivation of plaintiff's rights; respondeat superior not applicable).

The *Hall* action was not appealed and has been settled. Letter from Richard E. Rowe (counsel for appellees) to author (Sept. 22, 1980).

32. 430 U.S. at 659 n.12, 679 n.47; *see* text accompanying notes 17 & 18 *supra*.

33. 430 U.S. at 672-73.

34. *Id.* at 672, 680-82.

35. *See* note 9 *supra*.

corporal punishment in public schools because the history of the eighth amendment makes it clear that the clause was designed to protect only those individuals convicted of crime.[36] The dissenters in *Ingraham* disagreed with the majority's narrow view that the cruel and unusual punishment clause does not apply to non-criminal punishment, regardless of how barbaric, inhumane, or severe.[37]

The *Hall* decision reconciles the concerns of the dissenters in *Ingraham* that non-criminal punishment deserves constitutional protection with the majority's holding that prohibitions against cruel and unusal punishment apply only in criminal matters. The court in *Hall* concluded that the fourteenth amendment[38] guards against excessive punishment of school children in the same manner that the eighth amendment protects criminal offenders from cruel and unusual punishment. The court believed that it was necessary to recognize a fourteenth amendment right to bodily security when that same right was unavailable under the eighth amendment solely because the state intrusion occured in a non-criminal context.[39] By allowing public school children severely injured by corporal punishment to press substantive due process claims under section 1983, the court has provided them with the constitutional protection that has been provided in the criminal context.[40] The court noted that the right to bodily security protected by substantive due process is substantially congruent with the protection offered by the cruel and unusual punishment clause of the eighth amendment.[41]

In extending the constitutional right to bodily security to school children, the *Hall* court relied upon decisions upholding the substantive due process rights of criminal suspects.[42] Although such rights have been afforded persons charged with crimes and in the custody of police officers,[43] it does not necessarily follow that they should be afforded to school children under the disciplinary control of public school teachers. The educational and social environment of the public school must be critically compared with the characteristics of the criminal justice system. In *Ingraham* the Supreme Court compared the prisoner and the school child, concluding that the openness of the public school, its supervision by the community, and state civil and

36. 430 U.S. at 668-71.

37. *Id.* at 691-92 (White, J., dissenting). Justices Brennan, Marshall, and Stevens joined in Justice White's dissent.

38. *See* note 8 *supra.*

39. 621 F.2d at 611 n.5.

40. *See* note 26 *supra.*

41. 621 F.2d at 611 n.5.

42. 621 F.2d at 613 n.7. *See* note 26 *supra.*

43. *See* note 26 *supra.*

criminal liability for teachers who inflict excessive punishment rendered notice and hearing prior to the use of corporal punishment unnecessary.[44] Even though the distinctions set forth in *Ingraham* may not be dispositive of a substantive due process claim, the *Hall* court should have considered these characteristics of the public school system in its examination of the substantive due process right.[45]

Although a public school is an open institution, children are captive and subject to their teachers' discipline during the school day. The community's supervision of the school is but one control over teacher excesses; however, this should not preclude a remedy when teacher excesses occur despite the supervision. Finally, although state remedies may exist, these do not preclude section 1983 relief.[46] Many of the real differences that do exist between the public school system and the criminal justice system become unimportant when an individual is unfairly abused and severely injured. Thus, the *Hall* court was correct in assuming that differences in environment are unimportant when a substantive due process right is violated. But because the Supreme Court in *Ingraham* enunciated and relied upon distinctions between the public school and the criminal justice systems,[47] the *Hall* court should have expressly stated its reasons for ignoring the differences that may exist.

The *Hall* court's decision expands the scope of section 1983 claims during a period when the Supreme Court has been restricting the scope of such claims.[48] When the Supreme Court determined that relief

---

44. 430 U.S. at 670.

45. The *Hall* court noted that the rule of constitutional law announced by its decision may be difficult to apply in the public school disciplinary context, but stated that its application would be no more difficult than in related realms already well established. 621 F.2d at 613.

46. *See* Monroe v. Pape, 365 U.S. at 174.

47. *See* text accompanying note 44 *supra*.

48. Section 1983 has not been expanded to protect rights not specifically enumerated in the Bill of Rights even though the Supreme Court has had the opportunity to make such an expansion in two decisions. In Paul v. Davis, 424 U.S. 693 (1976), area police chiefs in Louisville and Jefferson County, Kentucky, distributed a flyer to local merchants identifying subjects known to be active shoplifters. The plaintiff, Davis, had been arrested and charged with shoplifting and was therefore listed in the flyer. Shortly after the distribution, all charges against Davis were dropped. Davis asserted that he had been deprived of liberty protected by procedural due process of the fourth amendment and that being called an active shoplifter would inhibit him from entering business establishments and would impair future employment opportunities. The United States Court of Appeals for the Sixth Circuit determined that Davis had alleged facts establishing an unconstitutional denial of due process and therefore reversed the district court's dismissal of Davis' claim. Davis v. Paul, 505 F.2d 1180, 1183 (6th Cir. 1974), *rev'd*, 424 U.S. 693 (1976). The Supreme Court recognized that Davis appeared to state a classic claim for defamation. 424 U.S. at 697. The Court, however, refused to find a liberty interest

under section 1983 could exist in parallel with state remedies,[49] section 1983 protected only those rights specifically guaranteed by the Bill of Rights and applied to the states through the fourteenth amendment.[50] Concerned that section 1983 might unleash a floodgate of tort law claims against state officials,[51] the Supreme Court has never applied section 1983 protection to those penumbra rights recognized but not specifically enumerated in the Bill of Rights.[52] The right to bodily security is such a penumbra right because it is a liberty interest recognized under the fourteenth amendment, but not specifically articulated in the Bill of Rights.[53] Although the *Hall* court's expansion of

---

in reputation, despite previous decisions which had suggested that reputation would be recognized as a core liberty interest. *Id.* at 698. *See* Goss v. Lopez, 419 U.S. 565, 574-75 (1975) (high school student could not be suspended without notice and hearing; the due process clause is invoked where a person's reputation is at stake); Board of Regents v. Roth, 408 U.S. 564, 573 (1972) (Court stated that if the nonrenewal of a state university teacher's employment contract had been based on a charge of dishonesty or immorality, due process rights would be implicated); Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971) (state statute that provides for "posting" without notice or hearing, with respect to any person who "by excessive drinking" produces certain conditions or exhibits specified traits, such as exposing himself or family "to want" or becoming "dangerous to the peace" of the community, is unconstitutional; where a person's good name, reputation, honor, or integrity is at stake, notice and an opportunity to be heard are essential). *See generally* McClellan & Northcross, *Remedies and Damages for Violations of Constitutional Rights*, 18 DUQ. L. REV. 409, 422-23, 471 (1980) [hereinafter cited as McClellan & Northcross].

In Baker v. McCollan, 443 U.S. 137 (1979), the plaintiff filed a claim under section 1983 asserting that a sheriff's negligent failure to investigate his protests of mistaken identity constituted a deprivation of liberty without due process of law. *Id.* at 141. The Supreme Court reversed the finding of the United States Court of Appeals for the Fifth Circuit that a valid claim of false imprisonment under section 1983 had been stated, McCollan v. Tate, 575 F.2d 509, 512 (5th Cir. 1978), holding that no constitutional claim existed because the detention was made pursuant to a warrant conforming to the requirements of the fourth amendment. 443 U.S. at 143. *See generally* McClellan & Northcross, *supra* at 435-36.

49. *See* Monroe v. Pape, 365 U.S. at 174.

50. In *Paul v. Davis* the Supreme Court emphasized that, according to *Monroe v. Pape*, to recover under section 1983 one must point to a specific constitutional guarantee safeguarding the asserted interest. 424 U.S. at 700-01 (citing 365 U.S. at 171). *See generally* McClellan & Northcross, *supra* note 48, at 437.

51. Paul v. Davis, 424 U.S. at 699.

52. *See* McClellan & Northcross, *supra* note 48, at 437.

53. The Court in *Rochin* discussed the indefinite and vague character of the due process clause, pointing out that

> "due process of law" requires an evaluation based on a disinterested inquiry pursued in the spirit of science, on a balanced order of facts exactly and fairly stated, on a detached consideration of conflicting claims . . . , on a judgment not *ad hoc* and episodic but duly mindful of reconciling the needs both of continuity and a change in a progressive society.

342 U.S. at 172 (citation omitted). The Court concluded that illegally breaking into the privacy of the accused in a manner shocking to the conscience violates due process.

section 1983 appears to break with the Supreme Court's pattern of restricting section 1983, the court did place limitations on the right which they found. The *Hall* court restricted the boundaries of the right by requiring that the state action be inspired by malice and be so disproportionate to the need that it shocks the conscience of the court.[54] This standard, combined with the aberrational nature of excessive corporal punishment cases, should sufficiently limit the number of corporal punishment cases that might be brought under section 1983. Thus, the *Hall* court's expansion of section 1983 is warranted: the limitations imposed by the court prevent an overburdening of federal court dockets, but at the same time give a severely injured child the opportunity to plead her case in what may be a fairer forum than a state court.[55]

Richard A. Stevens

---

54. *See* text accompanying note 27 *supra*.

55. The Supreme Court in *Monroe* stated:

> It is abundantly clear that one reason the legislation [the Civil Rights Act] was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the State . . . .

365 U.S. at 180. *See also* Neuborne, *The Myth of Parity*, 90 HARV. L. REV. 1105 (1977); 39 U. PITT. L. REV. 770, 789 (1978).